

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MILO M. MCCUNE,

Plaintiff,

v.

CAROLYN W. COLVIN,
Commissioner of Social Security,

Defendant.

No. 2:15-CV-0033-JTR

ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

BEFORE THE COURT are cross-Motions for Summary Judgment. ECF No. 16, 17. Attorney Joseph M. Linehan represents Milo M. McCune (Plaintiff); Special Assistant United States Attorney David J. Burdett represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 15. After reviewing the administrative record and briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

JURISDICTION

In April 2012, Plaintiff filed applications for Supplemental Security Income (SSI) and Disability Insurance Benefits (DIB), alleging disability since April 1,

1 2000, due to mental illness, diabetes, neuropathy, stroke in 2009, HBP, anxiety,
2 depression, schizophrenia, and GERD. Tr. 196, 205, 223. At the administrative
3 hearing, Plaintiff amended his alleged onset date to March 22, 2012, effectively
4 withdrawing his DIB claim. Tr. 11, 37. The applications were denied initially and
5 upon reconsideration. Administrative Law Judge (ALJ) Caroline Siderius held a
6 hearing on October 28, 2013, Tr. 31-68, and issued an unfavorable decision on
7 November 15, 2013, Tr. 11-25. The Appeals Council denied Plaintiff's request for
8 review on December 15, 2014. Tr. 1-7. The ALJ's November 2013 decision thus
9 became the final decision of the Commissioner, which is appealable to the district
10 court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review
11 on February 4, 2015. ECF No. 1, 3.

12 **STATEMENT OF FACTS**

13 The facts of the case are set forth in the administrative hearing transcript, the
14 ALJ's decision, and the briefs of the parties. They are only briefly summarized
15 here.

16 Plaintiff was born on November 1, 1968, and was 43 years old on the
17 amended alleged onset date, March 22, 2012. Tr. 196. He completed the ninth
18 grade in school and earned his GED in 1989. Tr. 59, 224. Plaintiff testified at the
19 administrative hearing he last worked as a seafood processor in 2000, but believed
20 he could no longer work because he has a hard time associating with people and
21 was taking medication that would not permit him to operate vehicles. Tr. 50, 52.
22 He also stated he has peripheral neuropathy which limits his ability to stand and
23 walk. Tr. 53.

24 Plaintiff was convicted of first degree rape of a child and served 11 years of
25 a 12-year, six-month prison sentence. Tr. 51. He has since violated the terms of
26 his probation on two occasions, one for drinking and one for using
27 methamphetamine. Tr. 51. At the time of the administrative hearing, Plaintiff was
28 living in the Carlyle Care Center, an assisted living facility for individuals with

1 health problems. Tr. 52. He stated he spends his day at the Carlyle House
2 watching television and hanging out with his roommate and two other friends at
3 the facility. Tr. 53-55.

4 Plaintiff testified he has PTSD stemming from an incident where a person
5 raped and tried to kill him when he was about five years old. Tr. 56. As a result,
6 he experiences nightmares periodically and flashbacks two to three times a week.
7 Tr. 57. Plaintiff testified that when he has a flashback, he will isolate himself in
8 his room, sometimes for a couple of hours. Tr. 57. Plaintiff stated he also
9 struggles with depression and anxiety and endures psychotic episodes and mood
10 swings. Tr. 57-58, 61.

11 STANDARD OF REVIEW

12 The ALJ is responsible for determining credibility, resolving conflicts in
13 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
14 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed de novo,
15 although deference is owed to a reasonable construction of the applicable statutes.
16 *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ
17 may be reversed only if it is not supported by substantial evidence or if it is based
18 on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial
19 evidence is defined as being more than a mere scintilla, but less than a
20 preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant
21 evidence as a reasonable mind might accept as adequate to support a conclusion.
22 *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to
23 more than one rational interpretation, the Court may not substitute its judgment for
24 that of the ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec.*
25 *Admin.*, 169 F.3d 595, 599 (9th Cir. 1999). Nevertheless, a decision supported by
26 substantial evidence will still be set aside if the proper legal standards were not
27 applied in weighing the evidence and making the decision. *Browner v. Secretary*
28 *of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial

evidence supports the administrative findings, or if conflicting evidence supports a finding of either disability or non-disability, the ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

SEQUENTIAL EVALUATION PROCESS

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a), 416.920(a); *see, Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the burden of proof rests upon the claimant to establish a *prima facie* case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is met once a claimant establishes that a physical or mental impairment prevents him from engaging in his previous occupation. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a claimant cannot do his past relevant work, the ALJ proceeds to step five, and the burden shifts to the Commissioner to show that (1) the claimant can make an adjustment to other work; and (2) specific jobs exist in the national economy which claimant can perform. *Batson v. Commissioner of Social Sec. Admin.*, 359 F.3d 1190, 1193-1194 (2004). If a claimant cannot make an adjustment to other work in the national economy, a finding of "disabled" is made. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

ADMINISTRATIVE DECISION

On November 15, 2013, the ALJ issued a decision finding Plaintiff was not disabled as defined in the Social Security Act. At step one, the ALJ found Plaintiff had not engaged in substantial gainful activity since March 22, 2012, the alleged onset date. Tr. 13. At step two, the ALJ determined Plaintiff had the following severe impairments: diabetes, peripheral neuropathy, personality disorder, and depressive disorder. Tr. 13. At step three, the ALJ found Plaintiff did not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments. Tr. 15.

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1 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and
2 determined he could perform a range of light exertion level work. Tr. 17. The
3 ALJ found Plaintiff could lift up to 20 pounds occasionally and lift 10 pounds
4 frequently; could sit up to six hours a day; could stand and/or walk thirty minutes
5 at a time for up to two hours a day; would need to change positions once an hour;
6 could not use ladders, ropes or scaffolds; could occasionally climb ramps and
7 stairs; could not work at unprotected heights; could occasionally kneel, crouch,
8 crawl and stoop; could occasionally operate foot pedals; must avoid concentrated
9 exposure to extreme temperatures; could perform simple, repetitive tasks with no
10 detailed work; could tolerate only occasional changes in work duties and
11 superficial contact with coworkers and the general public; and would be able to
12 tolerate no more than ordinary production requirements. Tr. 17.

13 At step four, the ALJ found Plaintiff was not able to perform his past
14 relevant work as a fish processor, outside deliverer and courier, and machine
15 operator II. Tr. 23-24. However, at step five, the ALJ determined that,
16 considering Plaintiff's age, education, work experience and RFC, and based on the
17 testimony of the vocational expert, there were other jobs that exist in significant
18 numbers in the national economy Plaintiff could perform, including assembly
19 occupations, product inspector and checker jobs, and hand package and packagers
20 positions. Tr. 24-25. The ALJ thus concluded Plaintiff was not under a disability
21 within the meaning of the Social Security Act at any time from March 22, 2012,
22 the alleged onset date, through the date of the ALJ's decision, November 15, 2013.
23 Tr. 25.

24 ISSUES

25 The question presented is whether substantial evidence supports the ALJ's
26 decision denying benefits and, if so, whether that decision is based on proper legal
27 standards.

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1 Plaintiff contends the ALJ erred by improperly rejecting the opinions of
2 Navid Vassey, M.D., and Lou Sowers, Ph.D., in assessing Plaintiff's psychological
3 condition. ECF No. 16 at 10-14.

4 DISCUSSION

5 A. Plaintiff's Credibility

6 While Plaintiff has not challenged the ALJ's finding that Plaintiff is not fully
7 credible, Tr. 18, 21, the Court finds the ALJ's credibility determination significant
8 in this case.

9 The ALJ indicated the following reasons for why she found Plaintiff was not
10 entirely credible: Plaintiff's testimony was not fully corroborated by the treatment
11 record; Plaintiff's activities reflected the need for no greater restrictions than those
12 set forth in the RFC determination; and Plaintiff had not been entirely compliant
13 with taking prescribed medications or adhering to prescribed treatment. Tr. 18-21.
14 The ALJ stated Plaintiff's noncompliance with prescribed medications and failure
15 to follow through with treatment recommendations suggested Plaintiff's condition
16 was not as severe as alleged. Tr. 18. The ALJ also indicated Plaintiff's
17 inconsistent reports of his symptoms further diminished the reliability of his
18 subjective complaints. Tr. 20. The ALJ concluded that while Plaintiff was
19 "certainly limited in functioning to some degree, it [wa]s not to the degree
20 alleged." Tr. 21.

21 The rationale provided by the ALJ is fully supported by the record, and the
22 ALJ's determination that Plaintiff's statements were not fully credible is
23 uncontested by Plaintiff. *See Paladin Assocs., Inc. v. Mont. Power Co.*, 328 F.3d
24 1145, 1164 (9th Cir. 2003) (issues not specifically and distinctly contested in a
25 party's opening brief are considered waived). Since Plaintiff was properly found
26 by the ALJ to be not entirely credible, the ALJ appropriately accorded little weight
27 to medical reports based primarily on Plaintiff's subjective complaints. *See*
28 *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001) (a physician's opinion

1 premised primarily on a claimant's subjective complaints may be discounted where
2 the record supports the ALJ's discounting of the claimant's credibility); *Morgan v.*
3 *Comm'r. of Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999) (the opinion of a
4 physician premised to a large extent on a claimant's own account of symptoms and
5 limitations may be disregarded where they have been properly discounted).

6 **B. Medical Source Opinions**

7 Plaintiff's sole contention is that the ALJ erred by failing to accord proper
8 weight to the opinions of certain medical sources regarding his psychological
9 limitations. Plaintiff specifically argues the ALJ erred by according "little weight"
10 to the opinions of Drs. Vassey and Sowers. ECF No. 16 at 10-14.

11 In disability proceedings, a treating physician's opinion carries more weight
12 than an examining physician's opinion, and an examining physician's opinion is
13 given more weight than that of a non-examining physician. *Benecke v. Barnhart*,
14 379 F.3d 587, 592 (9th Cir. 2004); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
15 1995). If the treating or examining physician's opinions are not contradicted, they
16 can be rejected only with clear and convincing reasons. *Lester*, 81 F.3d at 830. If
17 contradicted, the opinion can only be rejected for "specific" and "legitimate"
18 reasons that are supported by substantial evidence in the record. *Andrews v.*
19 *Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995). Historically, the courts have
20 recognized conflicting medical evidence, the absence of regular medical treatment
21 during the alleged period of disability, and the lack of medical support for doctors'
22 reports based substantially on a claimant's subjective complaints of pain as
23 specific, legitimate reasons for disregarding a treating or examining physician's
24 opinion. *Flaten v. Secretary of Health and Human Servs.*, 44 F.3d 1453, 1463-
25 1464 (9th Cir. 1995); *Fair v. Bowen*, 885 F.2d 597, 604 (9th Cir. 1989).

26 The ALJ found that although Plaintiff has severe mental impairments, the
27 objective medical evidence did not support the degree of limitation alleged by
28 Plaintiff. Tr. 19. The ALJ determined Plaintiff retained the RFC to perform

1 simple, repetitive tasks with no detailed work; could tolerate only occasional
 2 changes in work duties and superficial contact with coworkers and the general
 3 public; and would be able to tolerate no more than ordinary production
 4 requirements. Tr. 17. The Court finds the ALJ's interpretation of the medical
 5 record is supported by substantial evidence. *See infra*.

6 **1. Plaintiff's Mental Health Records Prior to Alleged Onset Date**

7 As discussed by the ALJ, Plaintiff's medical records show a history of
 8 mental health treatment while he was incarcerated and prior to the alleged onset
 9 date. Tr. 19. He was prescribed medication, seen by a psychiatrist, and reported
 10 improvement of his symptoms with medication. *Id.* While incarcerated, Plaintiff
 11 actively participated in treatment, attended church, participated in bible study,
 12 participated in group therapy and worked. *Id.* Many of his reports of symptoms
 13 and difficulty getting along with others was related to the nature of his crime. *Id.*
 14 As indicated by the ALJ, these mental health treatment records did not document
 15 the significant symptoms reported by Plaintiff. Tr. 20.

16 **2. Navid Vassey, M.D.**

17 Plaintiff contends the ALJ erred by failing to accord proper weight to the
 18 opinions of his treating psychiatrist, Navid Vassey, M.D. ECF No. 16 at 10.
 19 Plaintiff argues the opinions expressed by Dr. Vassey demonstrate Plaintiff is more
 20 psychologically limited than what was determined by the ALJ in this case. *Id.*

21 Dr. Vassey completed a psychiatric assessment on March 14, 2012. Tr. 533-
 22 536. Dr. Vassey diagnosed Plaintiff with major depressive disorder, recurrent in
 23 remission; PTSD; and history of polysubstance abuse. Tr. 535. He assessed a
 24 Global Assessment of Functioning (GAF) score of 45.¹ While this record is

26 ¹Although Dr. Vassey assigned a GAF score of 45, an ALJ has no obligation
 27 to credit or even consider GAF scores in a disability determination. *See* 65 Fed.
 28 Reg. 50746, 50764-50765 (Aug. 21, 2000) ("The GAF scale . . . does not have a

1 outside of the relevant time period in this matter, the ALJ addressed the report as
2 indicative of inconsistent reporting by Plaintiff. Tr. 19-20. The ALJ stated
3 Plaintiff had previously indicated his mood was “pretty good” but he had anxiety
4 due to his transition to a new environment, Plaintiff had denied depressive
5 symptoms, he indicated his symptoms were managed by medications, he denied
6 irritability or anger, and he reported a history of hallucinations, but not for several
7 months. Tr. 19, Tr. 543. However, just a few days later, during the March 14,
8 2012, psychiatric assessment with Dr. Vassey, Plaintiff indicated he was having
9 daily hallucinations for the past few days and, prior to that, once or twice a week.
10 Tr. 19-20, Tr. 533-536.

11 On October 10, 2013, Dr. Vassey completed another mental status exam.
12 Tr. 636-639. Plaintiff denied a recent depressed mood, anxiety symptoms were
13 unchanged, and PTSD symptoms were mildly improved. Tr. 20, 637. Plaintiff’s
14 mood was noted as “good,” and Dr. Vassey marked that Plaintiff was improved,
15 but symptomatic. Tr. 637-638. As noted by the ALJ, Dr. Vassey’s mental status
16 exams largely remained the same with the only significant findings based on
17 Plaintiff’s self-report of symptoms. Tr. 20. As indicated by the ALJ, while
18 Plaintiff continued to report some hallucinations and paranoia, he would also
19 typically be reported to be in a good mood or doing well, without significant
20 findings upon mental status exam, and there were never findings of him responding
21 to internal stimuli. Tr. 20.

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23 direct correlation to the severity requirements in our mental disorders listings.”).
24 In fact, the GAF scale is no longer included in the DSM–V: “It was recommended
25 that the GAF be dropped from the DSM-5 for several reasons, including its
26 conceptual lack of clarity (i.e., including symptoms, suicide risk, and disabilities in
27 its descriptors) and questionable psychometrics in routine practice.” Diagnostic
28 and Statistical Manual of Mental Disorders–V, 16 (5th ed. 2013).

1 On October 31, 2013, Dr. Vassey completed a mental medical source
2 statement form. Tr. 783-786. Dr. Vassey checked boxes indicating Plaintiff
3 generally had mild and moderate functional limitations. Tr. 783-784. However,
4 Dr. Vassey also checked a box finding Plaintiff had a “severe” limitation in his
5 ability to complete a normal workday and workweek without interruptions from
6 psychologically based symptoms and to perform at a consistent pace without an
7 unreasonable number and length of rest periods. Tr. 784. Dr. Vassey explained
8 that the assessed limitations were based on Plaintiff’s symptoms of irritability, low
9 energy, hallucinations, depressed mood, paranoia, nightmares, flashbacks, and
10 elevated level of worry. Tr. 785. The assessed limitations in this check-box report
11 are thus based on Plaintiff’s self-report of symptoms.² Tr. 21. The ALJ indicated
12 Dr. Vassey regularly noted Plaintiff’s reported symptoms but has never reported
13 observing Plaintiff respond to internal stimuli or exhibit psychotic behavior. Tr.
14 21. Instead, Dr. Vassey described Plaintiff as maintaining good eye contact,
15 cooperative, alert, having normal speech and normal thought processes, oriented,
16 attentive, and having normal memory. Tr. 21. Therefore, as concluded by the

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18 ²As discussed above, the ALJ’s adverse credibility determination is
19 supported by clear and convincing reasons, and a physician’s opinion may be
20 disregarded when it is premised on the properly rejected subjective complaints of a
21 claimant. *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001); *see also*
22 *Morgan v. Comm’r. of Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999) (the
23 opinion of a physician premised to a large extent on a claimant’s own account of
24 symptoms and limitations may be disregarded where they have been properly
25 discounted). Since Plaintiff was properly found by the ALJ to be not entirely
26 credible, *see supra*, the ALJ appropriately discounted Dr. Vassey’s report on the
27 basis that it appeared to have been based primarily on Plaintiff’s subjective
28 complaints.

1 ALJ, Dr. Vassey's assessed severe limitation was not consistent with his own
2 treatment notes, nor with the weight of the record evidence. Tr. 21.

3 The ALJ accorded Dr. Vassey's assessed severe limitation "little weight"
4 because it was inconsistent with his own treatment notes and the weight of the
5 record evidence and appeared to have been based on Plaintiff's non-credible
6 subjective complaints. Tr. 21. These are clear and convincing reasons that are
7 supported by substantial evidence. *Lester*, 81 F.3d at 830. The ALJ did not err
8 with respect to her findings regarding the October 31, 2013, mental medical source
9 statement form completed by Dr. Vassey.

10 **3. State Agency Reviewing Physicians**

11 State agency reviewing physician Eugene Kester, M.D., completed a mental
12 RFC assessment of Plaintiff on May 17, 2012. Tr. 75-79, 83-90. Dr. Kester
13 opined Plaintiff had mild restrictions of activities of daily living, moderate
14 difficulties in maintaining social functioning, and moderate difficulties in
15 maintaining concentration, persistence or pace. Tr. 84. He indicated Plaintiff was
16 capable of working in an environment with superficial contact with the public,
17 coworkers and supervisors. Tr. 88.

18 State agency psychological consultant Thomas Clifford, Ph.D., completed a
19 mental RFC assessment of Plaintiff on July 19, 2012. Tr. 97-107, 112-122. Dr.
20 Clifford's opinion is consistent with the earlier opinion of Dr. Kester. He found
21 that Plaintiff had mild restrictions of activities of daily living, moderate difficulties
22 in maintaining social functioning, moderate difficulties in maintaining
23 concentration, persistence or pace, and could work in an environment with
24 superficial contact with the public, coworkers and supervisors. Tr. 98, 103. Dr.
25 Clifford opined that Plaintiff's mental health symptoms may affect his
26 concentration, persistence or pace, but he would be capable of performing simple
27 tasks and many detailed and complex tasks. Tr. 103. Dr. Clifford concluded that
28 although Plaintiff would have occasional lapses from his psychiatric disorder, he

1 was not precluded from productive activity in a competitive employment situation.
2 Tr. 103, 118.

3 The ALJ accorded “significant” weight to these opinions because they were
4 based on a review of all of Plaintiff’s medical records available and were supported
5 and consistent with references to the objective medical evidence of record. Tr. 22.
6 The state agency reviewing physicians’ reports lend further support to the ALJ’s
7 RFC assessment in this case.

8 **4. Margaret Ruth Moore, Ph.D.**

9 Margaret Ruth Moore, Ph.D., testified as an impartial medical expert at the
10 October 28, 2013, administrative hearing. Tr. 37-50.

11 Dr. Moore indicated the record reflected the presence of psychotic
12 symptoms, sometimes diagnosed as a disorder, sometimes diagnosed as features,
13 and sometimes questioned as possibly drug-related and/or related to a depressive
14 disorder. Tr. 40. She stated that some form of chronic depression is indicated,
15 although oftentimes situational, as well as varieties of a personality disorder. Tr.
16 41. Dr. Moore testified that Plaintiff has a long history of substance abuse,
17 including opiates, alcohol and methamphetamine, as well as recent documented
18 drug use. Tr. 42. She identified a personality disorder and depression as Plaintiff’s
19 severe impairments. Tr. 43. However, Dr. Moore stated the symptoms are not
20 well described and the medical records indicate Plaintiff benefited from taking
21 medications for his symptoms. Tr. 40. She testified that the content of the medical
22 notes reflect that Plaintiff was getting better over time: he was seeing his case
23 manager and reporting being in a good mood, had no psychotic symptoms, and was
24 learning how to negotiate difficulties with his brother. Tr. 49.

25 The ALJ gave “significant weight” to Dr. Moore’s expert opinion because
26 she had the opportunity to review all relevant evidence and her opinion was
27 consistent with Plaintiff’s treatment records which largely reported no significant
28 findings upon mental status exam. Tr. 22.

1 The Court concludes that Dr. Moore's opinions are supported by the weight
2 of the credible evidence of record, including the opinions of the state agency
3 reviewing physicians. The ALJ properly accorded Dr. Moore's findings
4 significant weight and incorporated her opinions in the final determination.

5 **5. Lou Sowers, Ph.D.**

6 On January 10, 2012, Lou Sowers, Ph.D., completed a behavior health
7 discharge summary for the Department of Corrections. Tr. 399-401. Dr. Sowers
8 reported that Plaintiff's symptoms impaired his ability to think, concentrate, follow
9 simple or complex directions, and work well with others. Tr. 399-401.

10 It is important to note at the outset that this January 10, 2012, discharge
11 report predates the relevant time period in this case; the alleged onset date is March
12 22, 2012. *Fair*, 885 F.2d at 600 (medical opinions which predate the alleged onset
13 of disability are of limited relevance). The ALJ nevertheless addresses the report
14 in her decision. Tr. 22.

15 The ALJ accorded Dr. Sowers' report little weight because he "did not fully
16 explain the degree to which these abilities are impaired, and d[id] not give
17 objective evidence to support the finding." Tr. 22. This determination by the ALJ
18 is fully supported. Dr. Sowers' report does not provide an explanation or a basis
19 for the check-box findings therein. Tr. 399-401; *Crane v. Shalala*, 76 F.3d 251,
20 253 (9th Cir. 1996) (stating that the ALJ's rejection of a check-off report that did
21 not contain an explanation of the bases for the conclusions made was permissible).
22 There is no objective medical evidence provided to support the doctor's opinion.
23 Moreover, as indicated by the ALJ, the severity noted in the report was
24 inconsistent with contemporary evidence which stated that Plaintiff's mental
25 illness was under "good control." Tr. 22, 402. The ALJ provided clear and
26 convincing reasons for according little weight to the January 10, 2012, discharge
27 report of Dr. Sowers.

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1 It is the responsibility of the ALJ to determine credibility, resolve conflicts
 2 in medical testimony and resolve ambiguities, *Saelee v. Chater*, 94 F.3d 520, 522
 3 (9th Cir. 1996), and this Court may not substitute its own judgment for that of the
 4 ALJ, 42 U.S.C. § 405(g). Where, as here, the ALJ has made specific findings
 5 justifying a decision, and those findings are supported by substantial evidence in
 6 the record, this Court's role is not to second-guess that decision. *Fair*, 885 F.2d at
 7 604. Based on the foregoing, the Court finds the ALJ did not err in his assessment
 8 of the medical evidence of record. The ALJ's RFC determination is supported by
 9 substantial evidence in the record. The ALJ did not err by according little weight
 10 to the severe limitation marked on Dr. Vassey's October 31, 2013, mental medical
 11 source statement form and Dr. Sowers' January 10, 2012, discharge report.

12 CONCLUSION

13 Having reviewed the record and the ALJ's findings, the Court finds the
 14 ALJ's decision is supported by substantial evidence and free of legal error.
 15 Accordingly, **IT IS ORDERED:**

16 1. Defendant's Motion for Summary Judgment, **ECF No. 17**, is
 17 **GRANTED.**

18 2. Plaintiff's Motion for Summary Judgment, **ECF No. 16**, is **DENIED.**

19 The District Court Executive is directed to file this Order and provide a copy
 20 to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant
 21 and the file shall be **CLOSED.**

22 DATED March 21, 2016.



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 24 _____
 25 JOHN T. RODGERS
 26 UNITED STATES MAGISTRATE JUDGE
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